

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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Francis E. LIJOI,

Plaintiff,

-against-

MEMORANDUM AND ORDER
01-CV-4536 (ILG)

CONTINENTAL CASUALTY CO. and
FORBES, INC.

Defendants.

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GLASSER, United States District Judge:

Following its grant of summary judgment to the plaintiff, this Court referred the determination of the amount of damages and attorney's fees the plaintiff is entitled to receive and the proper prejudgment interest rate to be applied to the damages, the attorney's fees and costs to Magistrate Judge Pohorelsky to Report and Recommend.

The parties have agreed that the total amount of damages to be paid is the amount of past due benefits which the plaintiff should have received. Magistrate Judge Pohorelsky issued his first Report and Recommendation on February 6, 2007. That Report contained a thoroughly researched discussion of the applicable law on pre-judgment interest, with a careful analysis of an explanation for recommending that the state rate of 9% rather than the federal rate of 4.41% be applied; a thorough and carefully reasoned discussion of why the 14-day limitation of Fed. R. Civ. P. 54(d)(2)(B) was not applicable; a thoroughly researched discussion of the "lodestar" method in determining the award of attorney's fees and costs for which plaintiff is entitled to be reimbursed and a detailed review of the time sheets submitted by counsel and a

determination of their reasonableness.

A modification of that Report and Recommendation was issued on February 20, 2007, cogently discussing whether the statutory fee awarded must be used to offset fees owed pursuant to a contingency fee arrangement between the plaintiff and his counsel.

The Court has reviewed the Report and its Modification and adopts the Recommendations made in their entirety.

Accordingly, it is hereby ORDERED that the plaintiff is awarded \$135,059.96 in total attorney's fees and \$3,229.01 in total costs, together with prejudgment interest at the rate of 9%. The attorney's fees thus awarded need not be offset against the fees to be paid under the contingency fee arrangement.

SO ORDERED.

Dated: Brooklyn, New York
March 1, 2007

_____/s/_____
I. Leo Glasser
United States District Judge

Copies of the foregoing memorandum and order were sent to:

Counsel for the Plaintiff

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